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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,419	08/01/2001	Michael Dutka	M-101	6385

7590 11/18/2003
Joseph P. Errico
150 Douglas Road
Far Hills, NJ 07931

EXAMINER

PAYNE, SHARON E

ART UNIT PAPER NUMBER

2875

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,419

Applicant(s)

DUTKA ET AL.

Examiner

Sharon E. Payne

Art Unit

2875

AW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-13 and 16-19 is/are rejected.
- 7) ☐ Claim(s) 7, 8, 14, 15 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 9-15 are objected to because of the following informalities: the phrase "second housing member" in line 12 should be "first screening member." For purposes of writing this office action it is assumed that "second housing member" means "first screening member." Appropriate correction is required.

2. Claims 10-15 are necessarily included due to their dependency.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-6 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balthauser (U.S. Patent 2,853,598) in view of Bennett (U.S. Patent 4,809,145).

Regarding claim 1, Balthauser discloses a collapsible lamp with adjustable shade. The lamp includes at least one light source (reference number 21), a first hollow cylindrical housing member (reference number 51), the first hollow cylindrical housing member having at least one of the at least one light source disposed within it (Fig. 13), the first housing member further including a side wall which includes at least one portion thereof which is opaque and at least one other portion thereof which is translucent (column 3, lines 28-29), and a second hollow cylindrical housing member (reference number 50), the second cylindrical housing member having a larger diameter than the diameter of the first cylindrical housing member such that said first housing member may be disposed within the second housing member (Figs. 12 and 13), the second housing member further including at least one portion of the side wall thereof which is opaque and at least one other portion of the sidewall thereof which is translucent (column 3, lines 28-29), at least one of the first and second cylindrical housing members being selectively rotatable relative to the other such that the translucent portions thereof may be coincident to permit light to pass from the at least one light source disposed within the first housing member and through the second housing member (column 3, lines 31-33), and also selectively rotatable such that the opaque portions may be aligned such that no light from the at least one light source disposed within the first housing member can pass through the second housing member (column 3, lines 31-

33). Balthauser does not disclose a device that is adapted to prevent light from exiting the apparatus when desired.

Bennett discloses a device that is adapted so that when no light can pass through the second housing member, no light is cast by the device (column 2, line 7-10). (The top of the Bennett apparatus can be opaque.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the top of Bennett in the apparatus of Balthauser for preventing light from exiting the apparatus when desired.

Regarding claims 2 and 10, Balthauser does not specifically disclose making the translucent portions of the housing members (screening members) transparent.

Making the translucent portions transparent is considered to be an obvious variation in design. Since transparent portions are well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a transparent portion to transmit a coherent image of the light source to the outside.

Concerning claim 3, Balthauser discloses the translucent portion of the first and second cylindrical housing members comprising axially extending circumferential sections of each (Fig. 12).

Regarding claim 4, Balthauser discloses the translucent axially extending circumferential section of at least one of the first and second cylindrical housing members comprising less than forty-five degrees of circumferential arc around the corresponding cylindrical member (Fig. 12).

Concerning claim 5, Balthauser discloses a base member (reference number 60) and at least one upwardly extending support member (grooves, reference numbers 61 and 62) to which the first and second housing members (reference numbers 50 and 51) are mounted (Fig. 12), and relative to which at least one of the first and second housing members may rotate (column 3, lines 31-33).

Regarding claim 6, Balthauser discloses the at least one light source being support on a first support structure (reference number 24) and the housing members being supported on a second support structure (reference number 60), such that when the support structures are positioned adjacent one another the light source is disposed within the first housing member (Fig. 13).

Concerning claim 9, Balthauser discloses a light source (reference number 64), a first screen member having at least one portion thereof which is opaque and at least one other portion thereof which is translucent (Fig. 12) and a second screening member disposed between the first screening member and the light source (Fig. 12), the second screening member having at least one portion thereof which is opaque and at least one portion thereof which is translucent (Fig. 12), at least one of the first and second screening members being selectively translatable relative to the other such that the translucent portions and opaque portions of both screening members may be, alternatively, aligned such that light from the light source can pass through the screening members, or aligned such that light from the light source may not pass through the screening members (column 3, lines 31-40). Balthauser does not disclose the first screening member preventing light from being cast by the device.

Bennet discloses a device that is adapted so that when no light can pass through the first screening member, no light is cast by the device (column 2, lines 7-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the inverted flowerpot structure of Bennett in the apparatus of Balthauser to prevent light from exiting the apparatus when desired.

Regarding claim 11, Balthauser discloses the first and second screening members being cylindrical (Figs. 12 and 13).

Concerning claim 12, Balthauser discloses the light source being disposed within the second cylindrical screening member (Fig. 13).

Regarding claim 13, Balthauser discloses the light source being supported on a first support structure (reference number 24), and the screening members being supported on a second support structure (reference number 60) such that when the support structures are positioned adjacent one another, the light source is disposed within the second screening member (Figs. 12 and 13).

6. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (U.S. Patent 4,809,145) in view of Balthauser (U.S. Patent 2,853,598).

Regarding claim 16, Bennett discloses a first support base (Fig. 1), a light source supported by the first support base (Fig. 1), a second support base dimensioned to fully encompass the first support base without touching the first support base (Fig. 1, reference number 5), the second base supporting an inner translucent screening member dimensioned to encompass the light source without touching the light source

(reference number 2). (Fabric or plastic can be translucent; see column 2, lines 20-26.)

Bennett does not disclose the second screening member.

Balthauser discloses the second base further supporting an outer opaque screening member adapted for use in selectively covering at least a portion of the inner translucent screening member (Fig. 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the second screen of Balthauser in the apparatus of Bennett to further vary the amount of light coming through from the light source.

Regarding claim 17, Bennett does not disclose the outer screening member. Balthauser discloses the outer opaque screening member comprising a solid member that is dimensioned to encompass the inner translucent screening member (Figs. 12 and 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outer screening member of Balthauser in the apparatus of Bennett to further vary the amount of light exiting from the apparatus of Bennett.

Concerning claim 18, Bennett does not disclose the outer screening member. Balthauser discloses the outer opaque screening member comprising at least two opaque panels (column 2, lines 14-16), at least one of which is movable with respect to the other (Figs. 9-11), which can be positioned to jointly encompass the inner translucent screening member and alternatively positioned to reveal at least a portion of the inner translucent screening member (Figs. 7 and 9-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outer screening member of Balthauser in the apparatus of Bennett to vary further the amount of light escaping from the light source.

Regarding claim 19, Bennett does not disclose the outer screening member. Balthauser discloses an opaque folding door that can be closed about the inner translucent screening member and alternatively opened to reveal at least a portion of the inner translucent screening member (Figs. 9-11). (Each opaque panel functions as a door when it is moved.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outer screening member of Balthauser in the apparatus of Bennett for further varying the amount of light escaping from the apparatus.

Allowable Subject Matter

7. Claims 7, 8, 14, 15 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter. The prior art fails to disclose an illumination device having the following features

1) housing members that are supported on a second support structure comprising a base and two support arms between which the housing members extend parallel to the base and at least one of the support arms has an aperture leading to an enclosure defined by the first housing member; and

2) a second element supporting an outer translucent screening member covering at least a portion of the outer opaque screening member to enclose that portion of the outer opaque screening member between the inner translucent screening member and the outer translucent screening member.

Response to Arguments

9. Applicant's arguments with respect to claims 1-6, 9-13 and 16-19 have been considered but are moot in view of the new ground(s) of rejection.

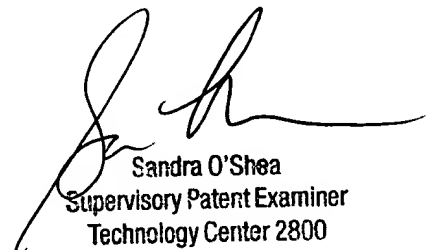
Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (703) 308-2125. The examiner can normally be reached on regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9318.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

sep


Sandra O'Shea
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